@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7508 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IBRAHIM MOHAMMAD SAIYED

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7508 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 21/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Kamlesh Kachhavah for the petitioner detenu and ld. AGP Ms. HB Punani for the

respondent State. Affidavit-in-reply filed by the Commissioner of Police, Surat City, tendered today by ld. AGP Ms. Punani is taken on record.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 14.06.2004 passed by the Commissioner of Police, Surat City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate for recording subjective satisfaction and passing the order of preventive detention, in reference to the Scheme of Sec.3 R/w 9(1) of the PASA Act, the detaining authority -Police Commissioner, Surat City has taken into account the fact of registration of a single solitary criminal offence being III. CR No. 410/2004 registered with Sachin Police Station for the offences punishable under sections 66(1)B, 65AE, 81, 98 and 99 of The Bombay Prohibition Act registered on 27.05.2004. The sponsoring authority has also placed statements of two witnesses before the detaining authority claiming privilege under Sec.9(2) of the PASA Act recorded on 03.06.2004 i.e. approximately after 07 days from the date of registration of the offence. Having considered the totality emerging from the record, statements of the witnesses, according to ld. counsel Mr. Kachhavah, do not inspire confidence because they are vague in nature. According to ld. counsel, order under challenge is illegal, arbitrary and violative of constitutional guarantee flowing from Articles 21 & 22 of the Constitution of India.

4. The order of detention is challenged on various grounds mentioned in the petition. However, ld. counsel Mr. Kachhavah appearing for the detenu has challenged the legality and validity of the order mainly on two ground. The first ground pressed into service by ld. counsel Mr. Kachhavah is that the petitioner has been wrongly branded as "bootlegger" and his activities are dangerous to maintenance of public order, as he was involved in solitary offence under Bombay Prohibition Act. The second ground pressed into service is that as per the settled legal position of the decision of the Apex Court in the case of Sohanlal Surajram Visnoi v/s State of Gujarat & Ors., 2004(2) GLR 1051, the impugned

order of detention requires to be quashed as the case the present case is squarely covered by the ratio of the aforesaid decision.

5. I have gone through the above-cited decision. For the sake of convenience, I would like to quote relevant paras 4 & 5 of the said decision:-

> "4. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Art.22(1) and 22(2) of the Constitution are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order, shall as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.
>
> 5. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Sec.2(b) of the P.A.S.A. Act and only one offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949. Whereas in Special Civil Application No.825/2003, the detenu is treated as "dangerous person" as defined in Sec.2(c) of the P.A.S.A. Act, and in this case also, a solitary incident is made basis for passing the detention order against him."

So, on this sole ground, without entering into the merits of the other grounds raised, this petition requires to be allowed.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 14.06.2004 passed by the Police Commissioner, Surat City, is hereby

quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

*rawal